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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,853	08/09/2006	Camille Dupuy	Q96476	2008

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WASHINGTON, DC 20037

EXAMINER
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BADR, HAMID R

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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03/30/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

sughrue@sughrue.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/588,853	<b>Applicant(s)</b> DUPUY ET AL.	
	<b>Examiner</b> HAMID R. BADR	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/15/2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicants' amendment filed 12/15/2010 is acknowledged.

The rejection of claims 28-48 and 50-51 under 35 U.S.C. 103(a) is withdrawn due to the amendments made by Applicants.

Claims 28-51 are being considered on the merits.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 28-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 28 is indefinite for "acid fermented flour". It is not clear what is meant by this phrase.

4. Claim 36 is indefinite for containing a broad range/narrow range limitation. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the

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remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 36 recites the broad recitation *Saccharomyces* genus, and the claim also recites "preferably" *Saccharomyces cerevisiae* which is the narrower statement of the range/limitation.

5. Claim 45 is indefinite. It is not clear what the Applicants mean by the whole claim. The claim is ambiguous. It is unclear what the applicants regard as the invention.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 28-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelinas et al. (US 5,108,766; hereinafter R1) in view of Akatsuka et al. (US 4,093,748; hereinafter R2)

8. R1 discloses a bread flavorant comprising a dough obtained by lactic fermentation of flour and resulting flavorant can be used in dried form. (Abstract).

9. R1 discloses that the fermented substrate can have flour comprising whole wheat, rye, barley, oat, buckwheat or combination of these flours. (col. 4, lines 12-20).

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R1 also discloses that flour contains microorganisms, mainly lactic acid bacteria and yeast, that significantly contribute to flavor production in the fermentation medium. (col. 4, lines 30-35)

10. R1 teaches of yeasts in the fermented dough with reference to *Saccharomyces cerevisiae*. (col. 6, lines 22-30).

11. R1 discloses the acid development and monitoring process for the fermented product. It is clear that manipulation of fermentation time and acidity is within the skill of the art. Therefore, a product having various levels of acidity, as presently claimed, can be developed by artisans.

12. R1 discloses that the flavorant can be freeze-dried, dried or frozen for longer storage periods. (Example 1). Since the product is dried, the dry matter of the product will be in the range as presently claimed.

13. While R1 clearly disclose the production of a dried flavor enhancing agent, R1 is silent regarding the inclusion of yeast extract in the mixture.

14. R2 discloses a process wherein yeast extract is added to yeast flour and fermented. (Abstract).

15. R2 discloses that the yeast extract is added at about 0.01-0.3% on the basis of the total amount of wheat flour. (col. 2, lines 18-22)

16. R2 teaches of using various types of yeast extracts from various sources including brewer's yeast as presently claimed. (col. 1, lines 51-58)

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17. R2 also discloses that the yeast extract added to the dough not only accelerates the maturing of the dough, but also it improves the volume, flavor, crust color and other qualities of bread. (col. 2, lines 3-7)

18. R2 discloses formulations for the doughs containing the yeast extract, no added salt and hydrolyzed egg white powder providing salt. The sponge and dough formulation contains less than 1.8% salt as presently claimed. (Col. 2, Example). The sodium content of the sponge and dough formulation is less than 0.5% as presently claimed. The flavor enhancing effect of yeast extracts in various foods is also known in the art. Therefore, when yeast extract is included in bakery formulations, it is obvious that due to the flavor enhancing effect of yeast, less salt will be needed regarding the taste effects of salt.

19. Since R2 discloses the inclusion of yeast extract without adding salt (Example, sponge and dough), it is clear that products of very low salt content can be produced as presently claimed.

20. Since the role of yeast extract as a flavoring agent and as a dough improving agent (accelerating the fermentation ) is disclosed by R2, it is obvious to incorporate it into the sour dough or simply mixed it with the dried fermented dough. The ratios of the dry matter of the dried sour dough to the dry matter of yeast extract can be obviously optimized for generating the best organoleptic and functional results. The optimization of ratios as presently claimed, is within the skill of the art.

21. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to make a dried sour dough either containing yeast extract

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or to make a dried sour dough and mix it with yeast extract to impart the flavors of both sour dough and yeast extract to the baked products. Absent any evidence to contrary and based on the combined teachings of the cited references, there would be a reasonable expectation of success in making the dried sour dough as presently claimed.

### ***Response to Arguments***

In light of the new grounds of rejection, necessitated by Applicants' amendment, Applicants' arguments have been considered but are now moot.

### ***Conclusion***

22. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-F, 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hamid R Badr  
Examiner  
Art Unit 1794

/Keith D. Hendricks/

Supervisory Patent Examiner, Art Unit 1794